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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,715	11/05/2003	Michael S. Head	09987-00002	8885
21918	7590	08/25/2004	EXAMINER	
DOWNS RACHLIN MARTIN PLLC 199 MAIN STREET P O BOX 190 BURLINGTON, VT 05402-0190				FITZGERALD, JOHN P
ART UNIT		PAPER NUMBER		
				2856

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/701,715	HEAD ET AL.
	Examiner	Art Unit
	John P Fitzgerald	2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) 11 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/05/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Objections

1. Claim 11 is objected to because of the following informalities: the alphabetic sequence of the indented limitations should end in “h,” not “e.” Appropriate correction is required.

Claim Rejections - 35 USC § 102

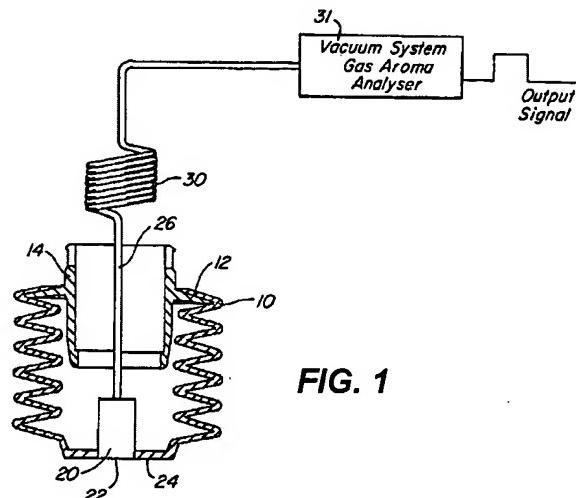
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

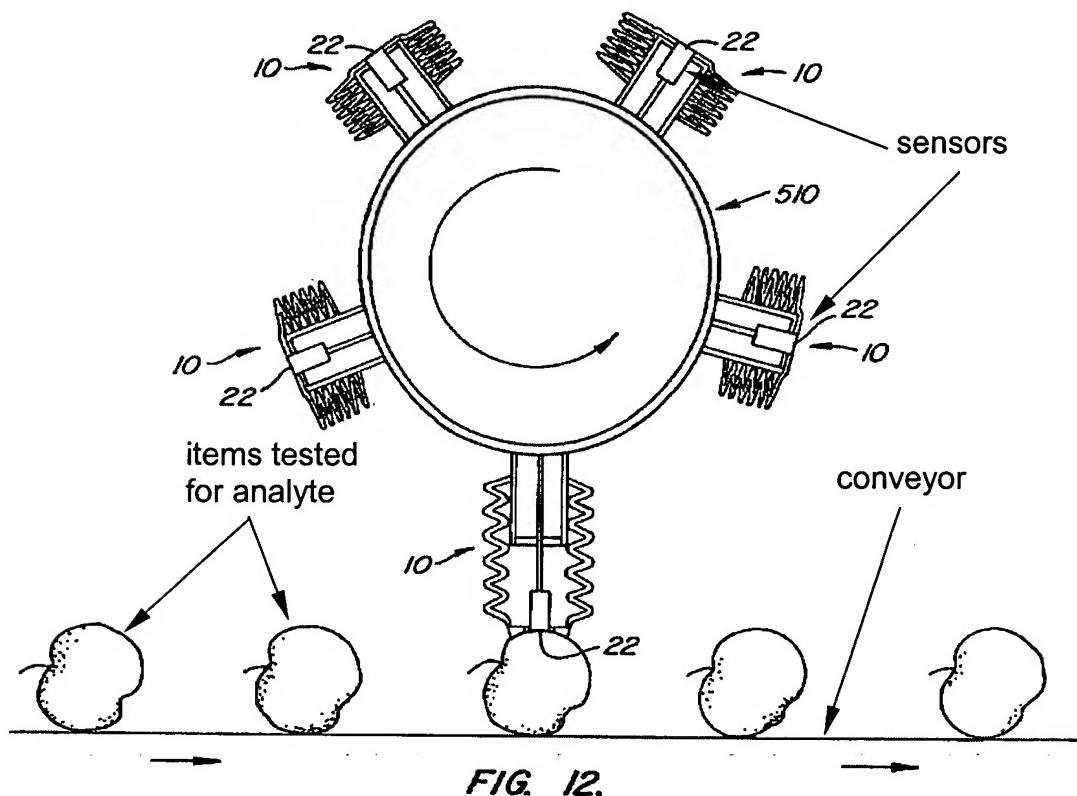
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 4-7 are rejected under 35 U.S.C. § 102(b) as being anticipated by US 6,435,002 to Briggs. Briggs discloses a method of testing a first item and a second item for the presence of analyte (Figs. 1 and 12) comprising the all of the steps of moving first and second items into and out of first and second positions while moving first and second sensors (20) (electronic noses/sniffers, as recited in claim 4, Briggs col. 4, line 19) into and out of first and second positions, the sensors operatively configured to detect the presence of the analyte in the first and second items (as recited in steps (a) through (h) of claim 1) (Briggs: col. 4, lines 4-32 and col. 6, lines 40-51); wherein the determination of the presence of the analyte via the sensor includes moving/blowing/drawing (note: movement of fluid, either blowing/drawing are relative terms) a fluid from the first item to the first sensor (as recited in claims 5 and 6) (Briggs: col. 3,

lines 61-67), wherein the sensor is placed in communication with sensor electronics (31) (as recited in claim 7).



US 6,435,002 to Briggs



4. Claims 13-17, 22, 24 and 25 are rejected under 35 U.S.C. § 102(b) as being anticipated by US 6,435,002 to Briggs. Briggs discloses an apparatus for testing each one of a plurality of items for the presence of an analyte (Figs. 1 and 12) having: a) a plurality of sensors (20) (electronic noses/sniffers, as recited in claim 14, Briggs col. 4, line 19) each operatively configured for detecting the analyte (Briggs: col. 4, lines 4-32); b) a first system that moves the plurality of items, in seriatim, to a first position; c) a second system that moves each one of the plurality of recycled/re-used sensors (as recited in claim 22), in seriatim, to a second position located proximate the first position; and d) a controller to control the second system to move the plurality of sensors to the second position each time the first system moves one of the plurality of items into the first position (note: a controller is an inherent feature of the system depicted Fig. 12, including means of diverting (i.e. accepting/rejecting) selected items, of the plurality of items from the first system conveyor (as recited in claim 17) means after testing for the presence of the analyte (as recited in claim 16) (Briggs: col. 4, lines 7-12) which can operate at speeds of 750-1,000 items; a third system for moving/blowing/drawing fluid to move at least a portion of the analyte when from the plurality of items located at the first position to the plurality of sensors located at second positions (as recited in claims 15 and 6) (Briggs: col. 3, lines 61-67); further having sensor electronics (31) wherein each of the plurality of sensors is in electrical communication and made operational for sensing the presence of the analyte, with the sensor electronics at the second position (as recited in claims 24 and 25).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,435,002 to Briggs as applied to claim 1 above, and further in view of WO 3041927 A1 to Moura et al. Briggs discloses a method of testing items for the presence of an analyte having all of the elements and method steps stated previously. Briggs further discloses that the electronic nose/sniffer can be made to sense many types of analytes (Briggs: col. 4, lines 13-34). Briggs does not expressly disclose the testing of cork stoppers for the presence of an analyte, wherein the analyte is TCA (as recited in claims 2 and 3). Moura et al. teach the testing of cork stoppers for the presence/removal of a TCA analyte by passing a gas flow over the cork stoppers and the moving/turning of the stoppers several times to ensure the stoppers are exposed to the gas flow (Moura et al.: page 7, lines 24-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to test cork stoppers for the presence of TCA, as taught by Moura et al., utilizing the apparatus and method steps disclosed by Briggs, thus testing for the contamination of the cork stoppers for 2,4,5-trichloroanisole (TCA), reducing the sensory characteristics (i.e. “off aromas”) damaging the wine in which the corks are utilized (Moura et al.: page 1, lines 10-27).

7. Claims 9 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,435,002 to Briggs and WO 3041927 A1 to Moura et al. Briggs discloses a method for testing

fruit and vegetables for the presence of an analyte (Figs. 1 and 12) comprising the steps of: a) providing an electronic nose/sniffer (Briggs col. 4, line 19) operatively configured for detecting the presence of an analyte (Briggs: col. 4, lines 4-32); b) moving the fruit/vegetable to a first position; c) causing a fluid to move a portion of the analyte, if present, from the fruit/vegetable to the electronic nose; and d) sensing via the electronic nose whether the analyte is present (Briggs: col. 3, lines 61-67). Briggs further discloses that the electronic nose/sniffer can be made to sense many types of analytes (Briggs: col. 4, lines 13-34). Briggs does not expressly disclose the testing of cork stoppers for the presence of an analyte, wherein the analyte is TCA (as recited in claims 9 and 10). Moura et al. teach the testing of cork stoppers for the presence/removal of a TCA analyte by passing a gas flow over the cork stoppers and the moving/turning of the stoppers several times to ensure the stoppers are exposed to the gas flow (Moura et al.: page 7, lines 24-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to test cork stoppers for the presence of TCA, as taught by Moura et al., utilizing the apparatus and method steps disclosed by Briggs, thus testing for the contamination of the cork stoppers for 2,4,5-trichloroanisole (TCA), reducing the sensory characteristics (i.e. “off aromas”) damaging the wine in which the corks are utilized (Moura et al.: page 1, lines 10-27).

8. Claims 11 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,435,002 to Briggs. Briggs discloses a method of testing at least a first and second item for the presence of an analyte (Figs. 1 and 12) including the method steps of a) providing a plurality of sensors operatively configured for sensing the presence of the analyte; b) providing a sensor electronics (21) operatively configured to make each of the plurality of sensors operation for sensing the presence of the analyte; c) moving a first one of the plurality of sensors to a location

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proximate the first item; d) placing the first one of the plurality of sensors into communication with the sensor electronics so as to make the first one of the plurality of sensors operational (i.e. the equivalent of providing electrical power or instructions from a controller) and e) testing the first item for the presence of the analyte; f) moving a second one of the plurality of sensors to a location proximate the second item; g) placing the second one of the plurality of sensors into communication with the sensor electronics so as to make the second one of the plurality of sensors operational; and h) testing the second item for the presence of the analyte (as recited in claim 11) (Briggs: col. 4, lines 4-32 and col. 6, lines 40-51). Briggs does not expressly disclose a method of testing at least a first and second item for the presence of an analyte wherein the steps d and g includes contacting a plurality of probes with a plurality of leads that are each in electrical communication with the corresponding one of the first and second sensors (as recited in claim 12). However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ probes and contact leads, thus providing intermittent electrical contact to provide electrical power to the sensors or electronic equipment, since it is simply a variation on elementary ‘switching means,’ which are common and well known within the art.

9. Claims 18-21, 23 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,435,002 to Briggs as applied to claim 1 above. Briggs discloses an apparatus for testing a plurality of items for the presence of an analyte having all of the elements stated previously, including a conveyor that conveys a plurality of items to the first position and a plurality of electronic noses/sniffers moved into and out of contact positions with the items for detecting the presence of the analyte, via multiple moving systems that repeatedly place items

and sensors in close proximity to one another for testing. All such systems are common and well known in the art and common to industry for all types of automation and assembly line processes. Therefore, the employment of a flexible web (as recited in claim 18) including a plurality of receivers configured to receive one of the plurality of items to be tested (as recited in claim 19) or alternating the rotating system of Fig. 12 to a conveyor system, wherein the sensors are secured to the web are obvious variants of the apparatus disclosed by Briggs, and thus well within the purview of one of ordinary skill in the art to employ or make such changes based testing or manufacturing needs. In specific regards to claim 26, employing an additional system for moving a plurality contact probes for electrical communication with a plurality of leads is obvious and well known to one having ordinary skill in the art at the time the invention was made, thus providing intermittent electrical contact to provide electrical power to the sensors or electronic equipment, since it simply a variation on elementary ‘switching means,’ which are common and well known within the art.

Conclusion

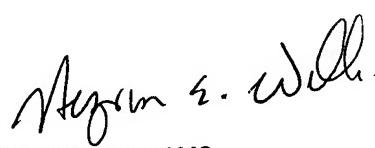
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Huebner, Dravnieks, Gelperin and Sakairi et al. teach various aspects of the claimed invention.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fitzgerald whose telephone number is (571) 272-2843. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams,

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can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JF
08/23/2004



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